

REMARKS/ARGUMENTS

As presently amended, the subject application now contains claims 1, 2, 5-14, 17-23, 25 and 28-33, with original claims 3, 4, 15, 16, 24, 26, 27 and 34 having been canceled.

In the Office Action dated December 13, 2004, objections were raised concerning certain minor inadvertencies appearing in the specification. Also, claim 31 was rejected on formal grounds under 35 U.S.C. §112, second paragraph. Furthermore, claims 1, 2, 6-12, 14 and 17-22 were rejected under 35 U.S.C. §102(b) as being anticipated by Vick et al '166 (US Patent 5,698,166); claim 34 was rejected under 35 U.S.C. §102(b) as being anticipated by Angelone, Jr. et al '153 (US Patent 5,587,153); claims 13, 23, 25 and 28-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Vick et al '166 in view of Taylor '787 (US Patent 4,257,787); and claims 3, 5, 15, 26 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Vick et al '166 in view of Taylor '787 and further in view of Van Breen '439 (US Patent 3,994,439).

In regard to the objections raised by the Examiner, it should be noted that applicants have amended the specification to correct each of objected items. That is, the first paragraph in the specification has been amended to specify that the parent application is now abandoned. Also, although the Office Action references a missing period at the conclusion of claim 31, from a review of applicants' copy of the Preliminary Amendment filed June 25, 2003, it appears that the missing period occurred at the end of claim 32 and not claim 31. Accordingly, a period "." has been entered at the conclusion of claim 32. Finally, the Examiner's objection to the spelling error in claim 34 has been rendered moot in view of the cancellation of claim 34 herein. Thus, applicants believe that all of the Examiner's objections have been overcome in view of the amendments presented herein and reconsideration is respectfully requested.

35 U.S.C. §112 Rejection

With regard to the rejection of claim 31 under 35 U.S.C. §112, second paragraph, applicants have amended claim 31 to provide antecedent basis for the term "co-solvent" therein by correcting the dependency of the claim. That is, in accordance with the Examiner's suggestion, claim 31 has been amended to depend from claim 30 rather than claim 23. Accordingly, as amended, it is believed that the §112 rejection of claim 31 has been overcome and withdrawal of this ground for rejection is respectfully requested.

35 U.S.C. §102(b) Rejections

With regard to the rejection of claims 1, 2, 6-12, 14 and 17-22 under 35 U.S.C. §102(b) as being anticipated by Vick et al '166, it should be noted that each of the rejected claims now requires that in an HVAC system a polymeric semi-permeable gel is adhered directly on a surface of a positively recited filter member. As claimed, the polymeric gel is defined as containing a polymeric gelling agent selected from the group consisting of hydrogenated styrene/isoprene copolymers; volatile silicones; polyacrylic acids and mixtures thereof. The resulting gel having the gelling agent incorporated therein possess certain physical characteristics enabling the gel to adhere directly to the surface of a filter without run off at temperatures of up to about 150 F and, also, enabling a fragrance component incorporated therein to effectively release over a predetermined time period after the filter with the gel adhered thereto is introduced into an HVAC system.

Clearly, Vick et al '166 does not disclose, teach or suggest application of a fragrance bearing semi-permeable gel directly on the surface of a filter member nor does it disclose, teach or suggest the use of a gelling agent to produce a polymeric gel that is capable of achieving the herein claimed advantageous physical characteristics.

Indeed, it should be noted that Vick et al '166 is referenced and distinguished in detail, for example, at Paragraphs [0006] on pages 2-3 of the specification of the present application. As noted therein and as should be clear from a review of the Vick et al '166 patent itself which, for example, discloses at col. 4, lines 37-65:

"The present invention provides a first method of producing an air freshening device that can be attached to an existing air filter in an air filtration system or can be placed in an enclosed space.... The solution is next applied to the substrate 11 through which air can pass....The substrate 11 may be attached to an existing air filter 30 for scenting air passing through the filter. The preferred means of attachment is the barbed shaft 40, although other means for attaching the substrate to an existing air filter can be used."
(Emphasis added).

In the Office Action, the Examiner's alleges that the hot melt adhesives taught by the Vick et al '166 reference would be "capable of being attached to the surface of a .. filter" and that the hot melt adhesives taught by Vick et al '166 would "inherently" prevent runoff at the claimed range of temperatures. However, it should be noted that none of the hot melt adhesives taught by Vick et al '166 are semi-permeable gels having the herein claimed gelling agents incorporated therein nor is there any teaching or suggestion in Vick et al '166 that the hot melt adhesives could or should be adhered directly on the surface of a filter member as disclosed and claimed herein.

In fact, applicants respectfully submit that Vick et al '166 actually teaches away from the application of a polymeric gel directly on the surface of a filter since it requires that the hot melts disclosed therein must be applied to a substrate which is subsequently attached to a filter employing a particular mechanical attachment device.

Accordingly, applicants respectfully submit that the Vick et al '166 patent does not anticipate the presently disclosed and claimed invention and, reconsideration and withdrawal of the rejection of claims 1, 2, 6-12, 14 and 17-22 under 35 U.S.C. §102(b) based on the Vick et al '166 reference are solicited.

With regard to the rejection of claim 34 under 35 U.S.C. §102(b) as being anticipated by Angelone, Jr. et al '153, this rejection has been rendered moot in view of the cancellation of claim 34 herein. However, for the record, applicants submit that the Angelone, Jr. et al '153 patent describes non-analogous antiperspirant formulations and applications thereof as compared with the present air freshening HVAC system directed invention.

35 U.S.C. §103(a) Rejections

With regard to the rejection of claims 13, 23, 25 and 28-33 under 35 U.S.C. §103(a) as being unpatentable over Vick et al '166 in view of Taylor '787, applicants respectfully submit that this rejection is not well taken in view of the amendments to the claims entered herein. Accordingly, reconsideration and withdrawal of this ground for rejection are respectfully requested.

Specifically, as noted above, Vick et al '166 does not disclose all of the limitations of the claims as suggested by the Examiner. To the contrary, as discussed above, Vick et al '166 does

not disclose, teach or suggest application of a fragrance bearing semi-permeable gel directly on the surface of a filter member nor does it disclose, teach or suggest the use of a gelling agent to produce a polymeric gel that is capable of achieving the herein claimed advantageous physical characteristics.

Taylor '787 clearly does not present any additional disclosure that would provide the missing teachings in Vick et al '166. In fact, Taylor '787, employs mechanical mounting devices such as bracket means for attaching cakes of air treatment material to a filter. Thus, applicants submit that the combination of the Vick et al '166 teachings with the Taylor '787 teachings would lead on skilled in the art to the conclusion that an air freshening composition must be contained in a separate container or on a separate substrate which is subsequently attached to a filter member and not to the presently disclosed and claimed invention wherein a polymeric gel having certain specific gelling agents incorporated therein are adhered directly on the surface of the filter without any intervening attachment elements.

Thus, applicants' submit that the combination of the Vick et al '166 teachings with the Taylor '787 teachings would not render the presently claimed invention obvious and, indeed, applicants respectfully submit that such combination would teach away from the presently disclosed and claimed invention. Accordingly, reconsideration and withdrawal of the rejection of claims 13, 23, 25 and 28-33 under 35 U.S.C. §103(a) as being unpatentable over Vick et al '166 in view of Taylor '787 are requested.

With regard to the rejection of claims 3, 5, 15, 26 and 34 under 35 U.S.C. §103(a) as being unpatentable over Vick et al '166 in view of Taylor '787 and further in view of Van Breen et al '439, it should be noted that in view of the amendments entered herein claims 3, 15, 26 and

34 have been cancelled and this rejection has been rendered moot relative to such claims. Thus, the only remaining claim subject to this ground for rejection is claim 5.

As discussed in detail above, applicants submit that the combination of teachings in Vick et al '166 and Taylor '787 do not render the presently claimed invention obvious and actually teach away from the presently disclosed and claimed invention. It is believed that the teachings in the tertiary Van Breen et al '439 reference patent further substantiates applicants' position.

Applicants submit that Van Breen et al '439 clearly does not present any additional disclosure that would provide the missing teachings in Vick et al '166 and Taylor '787. In fact, rather than teaching a gel formulation that is intended for application directly to the surface of a filter member, Van Breen et al '439 teaches, for example, at col. 3, lines 23-30 that:

"The composition may subsequently be molded, extruded or otherwise formed into articles, such as strips, rods etc., which are suitable for emitting sufficient perfume into the space. The composition may be contained in a suitable holder formed from an inert material such as lacquered metal or plastic materials such as polyethylene or polypropylene, or cardboard."

Thus, it should be apparent that the Van Breen et al '439 teachings taken in combination with the Vick et al '166 teachings with the Taylor '787 teachings would not render the presently claimed invention obvious. Once again, the Van Breen et al '439 describes a formed articles intended to be used independently of a filter or as an attachment to a filter member but, clearly, not to be adhered as a gel directly on the surface of a filter. Accordingly, reconsideration and withdrawal of the rejection of remaining claim 5 under 35 U.S.C. §103(a) as being unpatentable over Vick et al '166 in view of Taylor '787 and Van Breen et al '439 are requested.

Conclusion

Applicants have noted with interest, other prior art made of record but not relied upon herein. Based on this review, applicants submit that none of these additional references taken singly or in combination with any of the remaining art of record would anticipate or render the presently claimed invention obvious.

In view of the foregoing, applicants believe that it has been conclusively demonstrated that the present claims, as amended, patentably distinguish over all of the art of record. Accordingly, it is respectfully submitted that this application containing claims 1, 2, 5-14, 17-23, 25 and 28-33 is now in condition for allowance and such action is respectfully solicited.

It is believed that no additional charges or fees must be paid in connection with this reply. However, if any such charges or fees are due, the Assistant Commissioner is hereby authorized to charge our Deposit Account No. 10-1202.

Respectfully submitted,



James B. Raden
Attorney for Applicant
Registration No. 24,594
JONES DAY
77 West Wacker
Chicago, Illinois 60601
(312) 269-4340

February 23, 2005